IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PETITION (PIL) NO.103 OF 2006

1. Smt.Meera Sadanand Kamath & anr. .. .. Petitioners
v/s.
1. Municipal Corporation of Gr. Bombay & ors. .. .. Respondents

Mr.Rakesh Kumar i/by Legal Vision for petitioners.

Mr.K.K.Singhvi, Senior Advocate with Ms.S. Ajitkumar for BMC.

Mr.Nitin Pradhan with Mr.Amarendra Mishra for respondent Nos.4, 5, 6 & 8.

Respondents Nos.9 to 11 are served.

CORAM : H.L. GOKHALE, ACTING C.J. &
V.M. KANADE, J.

DATED : 15th February 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioners are citizens staying in Borivli (West). They have filed this Petition making a grievance with respect to the alleged illegal and unauthorised construction on a plot of land bearing final plot No.128 TPS III admeasuring 25,395.06 square meters in Borivli (West) which is reserved for public garden. The grievance is that the Municipal Corporation has permitted one Poinsur Gymkhana, whose Secretary is joined as respondent No.4 in this Petition, to develop the

said area and that the play ground is not being used for the purpose for which it ought to have been used.

3. Reliance is placed on a Circular dated 8th May 2002 issued by the Municipal Corporation wherein certain proactive policy has been laid down by the Municipal Corporation for the development and maintenance of gardens, recreation grounds, play grounds through the sponsors on adoption basis. The said circular is sought to be challenged as bad in law and it is contended that in such manner the plot cannot be given to such agencies. Alternatively, it is submitted that, in any case, there is a breach of the conditions laid down therein.

4. As far as the submission that the aforesaid circular is bad in law, we do not find any merit in this submission for the simple reason that it is a matter of policy for the Municipal Corporation. Under the said circular, limited rights are given to the agencies which are going to develop them. The kind of adoption which is permitted for the purpose of development is to continue for five years under Clause 6 and it is to be extended for another five years. It is a

performance of the agency which is to be seen for the purpose of continuation. Restrictions are placed on the charges that such agencies will level and under Clause 9 the maximum fee chargeable is Rs.2/- per person in case of normal gardens and Rs.5/- in case of gardens wherein extensive development has taken place involving not less than Rs.1 Crore. Preamble of the said circular itself states that the policy has been framed on the request of the Municipal Councillors and it is essentially because the Municipal Corporation wants to have a participation of various such agencies. It is an attempt to share the expenditure involved.

5. When the Petition came up earlier, an order was passed by a Division Bench that the facility over there will be available only on payment of Rs.5/-.

6. Mr.Pradhan, learned Counsel appearing for the contesting respondents, points out that only Rs.2/- are charged for entry. Undoubtedly, if such facilities like go-carting, boating, food court, entrance plaza, etc. are resorted to, then additional charges are required to be paid. He further points out that the charges are also as

per the letter / circular dated 13th September 2006 issued by the Municipal Corporation. The plot concerned is a huge plot of about 25,000 sq. meters. Earlier there was a pond in this plot which is developed into a lake. This being so, if in that lake this facility of boating is provided by charging fees as per the said Municipal letter / circular, we do not find anything erroneous in it. As far as visitors are concerned, charges are only Rs.5/- per head which are for persons of age of above 12 years and one day of the week the garden is to be kept free for every body.

7. A grievance is made that such facilities like go-carting, lake, food plaza, ought not to have been provided. This is a matter of perception and in a huge plot where there are a large number of visitors, if such facilities are provided, one cannot have a grievance so long as cleanliness is maintained.

8. A grievance is also made with respect to the contribution collected to the tune of about Rs.16,000/- from some persons who became members of the Poinsur Gymkhana which has undertaken this project. There are no special rights available to any of the members of the Gymkhana in this entire

garden which is now known as Veer Savarkar Udyan and this is a Municipal garden maintained by the Gymkhana. We do not find that there is any departure from the requirements of the Municipal Corporation as expected under its circulars issued from time to time. There is no reason to maintain this Petition. Petition is dismissed.

9. We make it clear that in the event this Poinsur Gymkhana wants to start boating or go-carting activity, the Gymkhana is free to start it at the rates fixed by the Municipal Corporation.

10. Petition is dismissed for the reasons stated above.

(ACTING C.J.)

(V.M. KANADE, J.)